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March 11, 2006

Date


Eric R. Benson, Esq.

IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

Applicant : Mark R. Harvie

Group Art Unit: 3744

Serial No.: 10/775,418 filed February 10, 2004 which is a Continuation-In-Part Application of the Co-Pending patent application U.S. Serial Number 10/754,429 filed 9 January 2004 (Now U.S. Patent No. 6,915,641) and claiming priority from Provisional Patent Application Number 60/439,972 which was filed on 14 January 2003.

Filed: 2/10/04

Examiner: Chen Wen Jiang

Title: PERSONAL BACK REST AND SEAT COOLING AND HEATING SYSTEM

Commissioner of Patents and Trademarks
Art Unit 3744
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Examiner Jiang:

AMENDMENT

In response to the undated First Office Action mailed on August 30, 2005, the Applicant elected Examiner identified Species A: thermoelectric cooler of Fig. 7 and asserted that Claims 1,2,3,4,5,9,10,11,12,13, and 18 are readable on said Species A. The Applicant filed a reply on September 27, 2005, and therein the Applicant contended that all originally filed 18 claims in this patent application are allowable and are herein re-presented. The Applicant asserted that the generic claims in this application are allowable and therefore reserved the right to claim any such additional species written in dependent form thereon or which otherwise include all the limitations of any such generic claims that may be found allowable by the Examiner.

In response to the undated Office Action mailed on December 12, 2005 respecting the instant application, and the informal telephone interview with the Examiner on December __, 2004,

regarding the Applicant's parent application of similar patentable subject matter of which this application is a Continuation-In-Part Application of the Co-Pending patent application U.S. Serial Number 10/754,429 filed 9 January 2004 (Now U.S. Patent No. 6,915,641) and claiming priority from Provisional Patent Application Number 60/439,972 which was filed on 14 January 2003, please amend the above-identified application as follows:

IN THE CLAIMS:

With regard the above-referenced parent application (now U.S. Patent No. 6,915,641) Examiner Jiang and the undersigned counsel discussed the Examiner's Office Action in a telephone interview on December ____, 2004. In that Office Action on the parent application the Examiner stated that the dependent Claim 5 was determined to be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. Claim 5 of the instant application contains the same patentable subject matter except to the extent that it now teaches its use in a back rest and seat cushion. Claims 1,2,3,12 and 13 were rejected pursuant to 35 U.S.C. §102(b) as anticipated by, or in the alternative, under 35 U.S. C. §103(a) as obvious over *Kushnir*. (WO 99/44552 - U.S. Pat. No. 6,508,831).

Similar to the rejection in the parent application Examiner Jiang now rejects the instant Claims 1,4,9,10,13 and 18 pursuant to 35 U.S.C. §102(b), as anticipated by, or in the alternative, under 35 U.S. C. §103(a) as obvious over *Abadilla et al.* (U.S. Pat. No. 5,564,276). For the same reasons as in the parent application Claim 11 of the instant application is now being rejected pursuant to 35 U.S.C. §103(a) as unpatentable over *Kushnir*. (WO 99/44552 - U.S. Pat. No. 6,508,831) in view of *Bayes et al.* (US 5,092,129) and *Frantti* (US 3,085,405).

Claims 1,2,3,12 and 13 of the instant application are similarly being rejected (as in the parent application) pursuant to 35 U.S.C. §103(a) as unpatentable over *Kushnir*. (WO 99/44552 - U.S. Pat. No. 6,508,831) in view of *Abadilla et al.* (U.S. Pat. No. 5,564,276).

Examiner Jiang now cites the parent application (now U.S. Pat. No. 6,915,641) as the basis, in part, to reject Claims 1-5,10-13 and 18 as unpatentable on the ground of non-statutory obviousness-type double patenting in view of *Abadilla et al.* (U.S. Pat. No. 5,564,276). The Applicant responds to this rejection by filing a terminal disclaimer herewith pursuant to 37 CFR 1.321(c).

Pursuant to the Examiner's comments regarding the parent application the Claims in the instant application have been amended as follows:

Claim 1 has been amended to include the limitations set forth in the allowable Claim 5. Claim 5, being rendered redundant by including the limitations therein in the base claim (Claim 1), is hereby canceled. Since all the Claims are dependent upon the newly amended and now allowable Claim 1 the previously withdrawn Claims 6-8 and 14-17 are re-presented as allowable species that depend upon a generic claim (Claim 1). In the telephone interview regarding the parent application (which was rejected for identical reasons) with the Examiner it was indicated that so long as the amendment was responsive with the Office Action discussion, then these claims as amended would be allowable. Hence the Claims have been amended as follows: